

APPENDIX A INITIAL REGULATORY FLEXIBILITY ANALYSIS

86. As required by the Regulatory Flexibility Act of 1980, as amended,¹⁴⁷ the Commission has prepared this Initial Regulatory Flexibility Analysis of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Further Notice of Proposed Rulemaking*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Further Notice of Proposed Rulemaking* provided in paragraph 73. The Commission will send a copy of this entire *Further Notice of Proposed Rulemaking* ("FNPRM"), including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration ("SBA").¹⁴⁸ In addition, the *Further Notice of Proposed Rulemaking* and the IRFA (or summaries thereof) will be published in the Federal Register.¹⁴⁹

87. **Need For, and Objectives of, the Proposed Rules.** This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposals to foster the development and implementation of terrestrial digital audio broadcasting. In the FNPRM the Commission (1) reaffirms its commitment to providing radio broadcasters with the opportunity to take advantage of DAB technology; (2) identifies Commission public policy objectives resulting from the introduction of DAB service, such as more diverse programming serving local and community needs; (3) explores avenues for encouraging the adoption of DAB by providing radio stations with the ability to offer datacasting and subscription services; and (4) proposes technical service rules for DAB, such as the authority to commence AM nighttime service and permitting efficient equipment authorization.

88. **Legal Basis.** The authority for this proposed rulemaking is contained in Sections 1, 2, 4(i), 303, 307, 312(a)(7), 315, 317, 507, and 508 of the Communications Act of 1934, 47 U.S.C §§ 151, 152, 154(i), 303, 307, 312(a)(7), 315, 317, 508, and 509.

89. **Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.** The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.¹⁵⁰ The RFA generally defines the term "small entity" as encompassing the terms "small business," "small organization," and "small governmental entity."¹⁵¹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁵² A small business concern is one which: (1) is

¹⁴⁷ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996)

¹⁴⁸ See 5 U.S.C. § 603(a).

¹⁴⁹ See 5 U.S.C. § 603(a).

¹⁵⁰ 5 U.S.C. § 603(b)(3).

¹⁵¹ 5 U.S.C. § 601(6).

¹⁵² 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after (continued. .)

independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").¹⁵³

90. Radio Stations. The proposed rules and policies potentially will apply to all AM and FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has no more than \$6 million in annual receipts as a small business.¹⁵⁴ A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. As of December 31 2003, official Commission records indicate that 11,011 radio stations were operating, of which 4,794 were AM stations.¹⁵⁵ Thus, the proposed rules will affect over 11,000 radio stations.

91. Electronics Equipment Manufacturers. Rules adopted in this proceeding could apply to manufacturers of DAB receiving equipment and other types of consumer electronics equipment. The SBA has developed definitions of small entity for manufacturers of audio and video equipment¹⁵⁶ as well as radio and television broadcasting and wireless communications equipment.¹⁵⁷ The former category includes companies employing 750 or fewer employees, the latter category includes companies employing 1000 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will use the SBA definitions applicable to manufacturers of audio and visual equipment and radio and television broadcasting and wireless communications equipment, since these are the two closest NAICS Codes applicable to the consumer electronics equipment manufacturing industry. However, these NAICS categories are broad and specific figures are not available as to how many of these establishments manufacture consumer equipment. According to the SBA's regulations, an audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern.¹⁵⁸ Census Bureau data indicates that there are 554 U.S. establishments that manufacture audio and visual equipment, and that 542 of these establishments have fewer than 500 employees and would be classified as small entities.¹⁵⁹ The (Continued from previous page)

opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

¹⁵³ 15 U.S.C. § 632.

¹⁵⁴ 13 C.F.R. § 121.201, NAICS Code 515112

¹⁵⁵ FCC Public Notice--Broadcast Station Totals as of December 31, 2003 (totals released Feb 24, 2004).

¹⁵⁶ 13 CFR § 121.201, NAICS code 334310.

¹⁵⁷ 13 CFR § 121.201, NAICS code 334220.

¹⁵⁸ 13 CFR § 121.201, NAICS code 334310.

¹⁵⁹ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series - Manufacturing, Audio and Video Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

remaining 12 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Under the SBA's regulations, a radio and television broadcasting and wireless communications equipment manufacturer must also have 750 or fewer employees in order to qualify as a small business concern.¹⁶⁰ Census Bureau data indicates that there 1,215 U.S. establishments that manufacture radio and television broadcasting and wireless communications equipment, and that 1,150 of these establishments have fewer than 500 employees and would be classified as small entities.¹⁶¹ The remaining 65 establishments have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. We therefore conclude that there are no more than 542 small manufacturers of audio and visual electronics equipment and no more than 1,150 small manufacturers of radio and television broadcasting and wireless communications equipment for consumer/household use.

92. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements. The proposed rules may impose additional reporting or recordkeeping requirements on existing radio stations, depending upon how the Commission chooses to update its forms in response to comments filed in this proceeding. We seek comment on the possible burden these requirements would place on small entities. Also, we seek comment on whether a special approach toward any possible compliance burdens on small entities might be appropriate.

93. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁶²

94. In the *First & O* in this proceeding, the Commission considered alternative standards for digital audio broadcasting. The Commission, after careful study and consideration, chose iBiquity's in-band on-channel technology over the competing Eureka 147 standard. In this *FNPRM*, the Commission seeks comment on what rules changes are in the public interest to reflect the advent of digital audio broadcasting using iBiquity's standard. The Commission proposes a flexible use policy for DAB, allowing radio stations to transmit high quality digital audio, multiplexed digital audio streams, and datacasting. At the same time, the Commission proposes to apply existing public interest requirements and operational rules to DAB. The Commission seeks comment on how to apply such requirements, understanding the burdens such regulation may impose on small as well as large entities affected by the

¹⁶⁰ 13 C.F.R. § 121.201, NAICS code 334220.

¹⁶¹ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Industry Series – Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Table 4 at 9 (1999). The amount of 500 employees was used to estimate the number of small business firms because the relevant Census categories stopped at 499 employees and began at 500 employees. No category for 750 employees existed. Thus, the number is as accurate as it is possible to calculate with the available information.

¹⁶² 5 U.S.C. § 603(b).

rules we will adopt. In addition, rather than require all radio stations to convert to a digital format by a date certain, the Commission proposes to allow marketplace forces to dictate the conversion process.

95. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals. None.

**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: Digital Audio Broadcasting Systems and Their Impact on Terrestrial Radio Broadcast Service

Today's item represents broadcast radio's version of the digital migration. Like the transition from analog to digital television, the conversion to digital radio will bring exciting new services and choices to the American people. As the digital audio conversion continues, consumers will have the ability to hear surround sound, CD-quality music over the air and will have access to new radio services, such as multi-casting, data services and subscription based services.

These new services and capabilities will provide more opportunities to promote localism and diversity on our nation's airwaves and will give broadcasters a greater ability to compete with emerging satellite and Internet radio services. With nearly 300 stations in over 100 markets already licensed to broadcast in digital, today's item demonstrates the Commission's commitment to developing the necessary framework to ensure a successful digital audio conversion for the public and broadcasters alike.

**SEPARATE STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: In the Matter of Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service, Further Notice of Proposed Rulemaking and Notice of Inquiry

Like my colleagues, I am enthused about the potential of digital radio to give consumers new and valuable services and to give terrestrial radio broadcasters new and valuable business opportunities. Partly this is about better quality sound but it's also about a host of new services, such as multiple audio programming channels, datacasting, and interactive features. All these, and I'll bet even more, will enhance audio broadcasting and advance the public interest.

But important questions remain to be settled. I am pleased that today we seek comment on many of these issues. For example, we seek comment on how to promote the digital transition and about ways that the availability of additional audio streams can further diversity goals for minorities and other underserved segments of the community. We also seek comment on measures to protect existing subcarrier services such as radio reading services for the blind and visually impaired.

I am also pleased that we raise some questions in this Further Notice about the public interest obligations of broadcasters in a digital environment, and I appreciate my colleagues engaging with me on these issues. We seek comment, for example, on how the statutory political broadcasting rules apply and how digital audio broadcasting can enhance political discourse. We ask about local programming requirements and the extent to which they should include news or public affairs programming. We address the obligation to provide emergency information to the public and how digital radio can provide greater access to critical information. And we seek comment generally on ways that broadcasters can use digital technology to better and more fully meet the needs of their communities.

All that being said, I would have preferred an even broader discussion of the public interest in this item rather than deferring some important issues to future proceedings. As just one example, an issue that we raised in the context of digital television but which is not addressed here is how broadcasters can identify community needs and enhance disclosure to their communities of how they are meeting their obligations.

I don't want to see us go down the same road here as we are going on digital TV. Over the past few years, we have made great progress on the mechanics of the digital transition, but there exists a great big digital gap on how digital television is going to serve the public interest. We actually started having a discussion, and a pretty good one at that, on digital television and the public interest a few years ago. The Commission issued a formal Notice of Inquiry in December 1999, followed by two Notices of Proposed Rulemaking the following year. But since that time, these proceedings have languished. We now have over 1000 digital stations broadcasting across this country and over 200 stations that are multicasting. And yet, these broadcasters still don't know what they must do to discharge their public interest obligations. And consumers don't know what to expect from digital radio either.

So I would hope we could find a way to get these critically important public interest questions out on the table now, early in the transition, so that consumers and people in the radio business alike would know what to expect. Then we can truly realize the full benefits of the digital transition.

I also believe that multicasting raises questions about our ownership rules. As the Further Notice recognizes, digital radio and multicasting hold out the promise of new opportunities to enhance diversity

and to promote localism. But there may also be some risks involved here, particularly as regards changes in the local competitive landscape. Might not the ability to multicast several streams in a community instead of just one have at least some effects on the competitive landscape in that particular media market? What does it mean for competition if a company that would be permitted to own eight radio stations in a market also obtains the ability to multicast many more programming streams? Does that really promote competition, localism and diversity in the digital era? We need to be looking at such questions before we leap.

I look forward to a good record on the issues and to working with both consumers and industry to develop digital audio broadcasting standards and rules so that the full promise of digital radio will come to pass as expeditiously as possible.

**SEPARATE STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio
Broadcast Service, Further Notice of Proposed Rulemaking and Notice of Inquiry*

Today, we begin the important process of ensuring that our rules are ready for tomorrow's digital radio. Digital radio is the natural evolution of radio, bringing CD quality sound to FM and FM quality to AM. It promises many new service offerings to eager listeners. In January, I was honored to participate in the first commercial launch of HD Radio here in Washington, D.C. at Howard University's WHUR-FM. We literally flipped the switch on digital radio, and it was a major hit.

Digital radio is an opportunity for broadcasters to build on their spectrum to serve the public even better. It's a clear example of doing more with the same spectrum. Broadcasters can now offer consumers more programming services including non-English language programming, on-demand interactive experiences, enhanced auxiliary services, and new data services including local traffic and weather, song and artist information, even sports scores and local news. Through NPR's leadership, the technology offers the possibility of transmitting more than one programming stream through supplemental audio channels.

I look forward to developing a full record on how broadcasters can use this opportunity to better serve their local communities. I welcome our examination of rule changes needed to ensure that broadcasters are meeting their public interest obligations in this new digital age, particularly with respect to supplemental audio channel capability. With this capability, a broadcaster could use each stream to enhance a local community's listening experience with local programming, including local civic and political discourse. These new horizons in radio broadcasting should correspond to new horizons in serving the public interest.

I am particularly pleased that we are seeking comment on how this technology can further our diversity goals and provide greater access for minorities, people with disabilities, or underserved segments of our local communities. I appreciate the willingness of my colleagues to seek comment on how digital radio can enhance political discourse and candidate access to the radio. We also appropriately ask about ways to enhance the broadcast of emergency information and generally how digital technology can enable a broadcaster to better respond to the needs of the community. Of course, there is much more we need to do to advance the public interest, but this is a good start.

The development of digital radio has been a careful and methodical exercise by iBiquity and others, with widespread industry participation and extensive testing to tackle problems as they arise. The Commission now must step up and do its part to ensure that this significant advancement in radio broadcasting fully advances the public interest in broadcasting.